

United States District Court
Northern District of California

EUSEBIO R. GONZALEZ,
Plaintiff,
v.
S. PATRICK, RN, et al.,
Defendants.

Case No.: 13-5383 CW (PR)
ORDER OF DISMISSAL WITH LEAVE
TO AMEND

Plaintiff Eusebio R. Gonzalez, a state prisoner incarcerated at San Quentin State Prison (SQSP) filed the present pro se civil rights action under 42 U.S.C. § 1983 asserting that staff at SQSP violated his constitutional rights. Plaintiff's motion to proceed in forma pauperis is granted in a separate order.

For the reasons discussed below, the complaint is DISMISSED with leave to amend.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such

1 relief. 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must,
 2 however, be liberally construed. Balistreri v. Pacifica Police
 3 Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must
 5 allege two essential elements: (1) that a right secured by the
 6 Constitution or laws of the United States was violated, and
 7 (2) that the alleged violation was committed by a person acting
 8 under color of state law. West v. Atkins, 487 U.S. 42, 48
 9 (1988). Under § 1983, liability may be imposed on an individual
 10 defendant only if the plaintiff can show that the defendant
 11 proximately caused the deprivation of a federally protected
 12 right. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).IIII

13 II. Plaintiff's Claims

14 Plaintiff names the following individuals as Defendants:
 15 Registered Nurse S. Patrick; Registered Nurse E. Aldip; Chief of
 16 Third Level Health Care Appeals L. D. Zamora; and Chief Executive
 17 Officer Andrew W. Deems. Plaintiff briefly alleges that, when he
 18 was incarcerated at Pleasant Valley State Prison (PVSP), he was
 19 diagnosed with "metatarsalgia."¹ On November 2, 2012, Plaintiff
 20 arrived at SQSP and became experienced second guessing about his
 21 diagnosis and inadequate medical service. He was no longer
 22 afforded the reasonable accommodations he had at PVSP.

23 The administrative appeals Plaintiff submits with his
 24 complaint indicate that Plaintiff named these Defendants because
 25 they were involved in reviewing his administrative appeals. In

26 _____
 27 ¹ "Metatarsalgia" describes "a condition marked by pain and
 28 inflammation in the ball of the foot." See
<http://www.mayclinic.org/diseases/metatarsalgia>.

1 his first appeals, Plaintiff asked to be referred to a podiatrist
2 and this request was denied. However, the Third Level Response
3 to Plaintiff's appeal indicates that, on April 10 and June 26,
4 2013, Plaintiff was seen by a podiatrist who noted that
5 Plaintiff's x-rays showed a healing fracture of recent origin.
6 In addition, on June 14, 2013, Plaintiff was seen by his primary
7 care provider regarding his foot pain and, as a result, Plaintiff
8 has an appointment with the prosthetics clinic for orthopedic
9 shoes.

10 Deliberate indifference to a prisoner's serious medical
11 needs violates the Eighth Amendment. Estelle v. Gamble, 429 U.S.
12 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.
13 1992), overruled on other grounds, WMX Technologies, Inc. v.
14 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison
15 official violates the Eighth Amendment only when two requirements
16 are met: (1) the deprivation alleged is, objectively,
17 sufficiently serious, and (2) the official is, subjectively,
18 deliberately indifferent to the inmate's health or safety.
19 Farmer v. Brennan, 511 U.S. 825, 834 (1994). A "serious" medical
20 need exists if the failure to treat a prisoner's condition could
21 result in further significant injury or the "unnecessary and
22 wanton infliction of pain." McGuckin, 974 F.2d at 1059. A
23 prison official exhibits deliberate indifference when he knows of
24 and disregards a substantial risk of serious harm to inmate
25 health or safety. Farmer, 511 U.S. at 837. In order for
26 deliberate indifference to be established, there must be a
27 purposeful act or failure to act on the part of the defendant and
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1 resulting harm. McGuckin, 974 F.2d at 1060. Deliberate
2 indifference may be shown when prison officials deny, delay or
3 intentionally interfere with medical treatment, or it may be
4 shown in the way in which they provide medical care. Id. at
5 1062.

6 The allegations in Plaintiff's complaint fail to state a
7 claim for deliberate indifference to his serious medical need.
8 Even if Plaintiff's matatarsalgia qualifies as a serious medical
9 need, he fails to include any allegations showing the subjective
10 element required by Farmer, that Defendants acted with deliberate
11 indifference to that serious medical need.

12 Accordingly, Plaintiff's complaint is dismissed. If
13 Plaintiff still feels that Defendants were deliberately
14 indifferent to his serious medical need, he is granted leave to
15 file an amended complaint to remedy the deficiencies noted above.
16 In an amended complaint, Plaintiff must allege the actions of
17 each Defendant that shows how that Defendant acted with
18 deliberate indifference to Plaintiff's serious medical need.

19 CONCLUSION

20 For the foregoing reasons, the Court orders as follows:

- 21 1. Plaintiff's complaint is DISMISSED.
- 22 2. Within twenty-eight (28) days from the date of this
23 Order, Plaintiff may file an amended complaint in order to cure
24 the deficiencies noted above.

25 Plaintiff shall use the court's civil rights complaint form,
26 a copy of which is provided herewith, and include in the caption
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1 both the case number of this action, No. C 13-5383 CW (PR), and
2 the heading "AMENDED COMPLAINT."

3 If Plaintiff fails to timely file an amended complaint in
4 conformity with this Order, the case will be dismissed without
5 prejudice and will be closed.

6 3. It is Plaintiff's responsibility to prosecute this
7 case. Plaintiff must keep the Court informed of any change of
8 address by filing a separate paper with the clerk headed "Notice
9 of Change of Address," and must comply with the Court's orders in
10 a timely fashion. Failure to do so may result in the dismissal
11 of this action, pursuant to Federal Rule of Civil Procedure
12 41(b), for failure to prosecute.

13 4. The Clerk of the Court shall provide Plaintiff with a
14 blank civil rights complaint form.

15 IT IS SO ORDERED.

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17 Dated: 3/18/2014



18 CLAUDIA WILKEN
19 UNITED STATES DISTRICT JUDGE
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